NO. 88-2072

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM OF 1988

Supreme Court, U.S.
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DANNY L. MILBURN,

Petitioner,

vs.

HAWKEYE BANK AND TRUST N.A. OF CENTERVILLE-SEYMOUR f/k/a CENTERVILLE NATIONAL BANK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE IOWA SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. THE PETITIONER'S REQUEST FOR WRIT OF CERTIORARI SHOULD BE DENIED AS PETITIONER LACKS STANDING HAVING FILED A CHAPTER 7 BANKRUPTCY, AND THE REAL PARTY IN INTEREST IS THE BANKRUPTCY TRUSTEE.

II. PETITIONER'S REQUEST FOR WRIT OF CERTIORARI SHOULD BE DENIED AS HAWKEYE BANK WOULD BE ENTITLED TO A DEED UNDER IOWA CODE §628.4 (1987) FOR STAYS OF THE SHERIFF SALE INVOKED BY PETITIONER ASIDE FROM THE AUTOMATIC STAY PROVISION OF THE BANKRUPTCY CODE.

III. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS THE IOWA SUPREME COURT GAVE FULL CONSIDERATION TO THE ISSUES AND DECIDED THEM CORRECTLY.

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STATEMENT OF THE CASE

In 1976 Hawkeye Bank and Trust N.A., of Centerville-Seymour (hereafter "Hawkeye Bank") made a loan to the petitioner secured by a mortage on 320 acres of real estate. The petitioner defaulted on the loan in 1982 and subsequently filed a Chapter 11 Bankruptcy, the first of four bankruptcies. Relief was granted from the automatic stay, and Hawkeye Bank petitioned to foreclose its mortgage. The day prior to the scheduled trial date, the petitioner filed a second Chapter 11 Bankruptcy. Again relief from the stay was granted, and a Decree of Foreclosure was entered on December 23, 1986. A Sheriff's Sale was thereafter scheduled for April 23, 1987. On April 22, 1987, the petitioner filed his third Bankruptcy Petition, this petition pursuant to Chapter 12 of the Bankruptcy Code, again invoking the automatic stay provision. The Bankruptcy Court dismissed the Chapter 12, based

upon petitioner's bad faith, and abuse of funds, as well as the lack of feasibility of his plan.

Hawkeye Bank rescheduled the sale for November 19, 1987, and requested that the District Court order the sheriff to issue a deed in lieu of a Sheriff's Certificate, pursuant to Iowa Code §628.4 (1987), which request was granted by the Court as to the non-homestead property, on November 16, 1987.

The petitioner subsequently requested and received from the United States Bankruptcy Court for the Southern District of Iowa a fourth stay of the Sheriff's Sale, pending appeal of that Court's dismissal of petitioner's Chapter 12 Bankruptcy. After hearing, the stay was again lifted, and the sale rescheduled for January 14, 1988. Petitioner thereafter requested and received a temporary stay of the sale from the Iowa Supreme Court, again delaying the sale, but

a permanent stay was subsequently denied. The sale was finally held on January 22, 1988.

Petitioner appealed the District Court's ruling ordering the Sheriff to deliver a deed to all but the forty acre homestead. Hawkeye Bank appealed the District Court's decision to allow redemption rights on petitioner's forty acre homestead. While the appeal was pending, Petitioner filed a Voluntary Petition for Chapter 7 Bankruptcy in the United States District Court for the Southern District of Iowa. The stay was partially lifted for purposes of proceeding with the appeal, but the Chapter 7 Bankruptcy is still pending at this time.

The Iowa Supreme Court on appeal affirmed the constitutionality of Iowa Code §628.4 (1987) finding that no property right to redemption existed where petitioner invoked a stay of the Sheriff Sale.

SUMMARY OF ARGUMENT

I. THE PETITIONER'S REQUEST FOR WRIT OF CERTIORARI SHOULD BE DENIED AS PETITIONER LACKS STANDING HAVING FILED A CHAPTER 7 BANKRUPTCY, AND THE REAL PARTY IN INTEREST IS THE BANKRUPTCY TRUSTEE.

The petitioner's filing of a Chapter 7 Bankruptcy prevents him from having a sufficient stake in the outcome of this controversy, as the real party in interest is the bankruptcy trustee.

II. PETITIONER'S REQUEST FOR WRIT OF CERTIORARI SHOULD BE DENIED AS HAWKEYE BANK WOULD BE ENTITLED TO A DEED UNDER IOWA CODE §628.4 (1987) FOR STAYS OF THE SHERIFF SALE INVOKED BY PETITIONER ASIDE FROM THE AUTOMATIC STAY PROVISION OF THE BANKRUPTCY CODE.

In addition to the automatic stays in bankruptcy received by the petitioner, there are two other independently sufficient grounds for invoking §628.4 of the Iowa Code, and the Supreme Court should therefore refuse to utilize its discretionary power to review the Iowa Supreme Court's decision.

III. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS THE IOWA SUPREME COURT GAVE FULL CONSIDERATION TO THE ISSUES AND DECIDED THEM CORRECTLY.

The Iowa Supreme Court correctly applied the due process, equal protection, and supremacy clause tests established by this court, and reached the correct decision that Iowa Code §628.4 (1987) was not unconstitutional, as no property right to redemption existed under Iowa law when the Petitoner filed bankruptcy.

ARGUMENT

I. THE PETITIONER'S REQUEST FOR WRIT OF CERTIORARI SHOULD BE DENIED AS PETITIONER LACKS STANDING HAVING FILED A CHAPTER 7 BANKRUPTCY, AND THE REAL PARTY IN INTEREST IS THE BANKRUPTCY TRUSTEE.

In order to have standing, a party must have a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Sierra Club v. Morton, 405 U.S. 727 (1972); Baker v. Carr, 369 U.S. 186 (1962). In this case, the petitioner filed a Chapter 7 Bankruptcy on

September 2, 1988, which case is still pending in the United States Bankruptcy Court for the Southern District of Iowa. While petitioner's discharge has been granted, the bankruptcy estate is still being administered and property, including any redemption rights, are currently the property of the bankruptcy estate and not of the petitioner. The petitioner, therefore, lacks a sufficient stake in the controversy to assert this matter on appeal, as reversal of the Iowa Supreme Court's decision would not operate to benefit him. Warth v. Seldin, 422 U.S. 490 (1975).

As the petitioner in this case lacks standing, the Petition for Writ of Certiorari should be denied.

II. PETITIONER'S REQUEST FOR WRIT OF CERTIORARI SHOULD BE DENIED AS HAWKEYE BANK WOULD BE ENTITLED TO A DEED UNDER IOWA CODE §628.4 (1987) FOR STAYS OF THE SHERIFF SALE INVOKED BY THE PETITIONER ASIDE FROM THE AUTOMATIC STAY PROVISION OF THE BANKRUPTCY CODE.

A review on Writ of Certiorari is not a matter of right, but of judicial discretion. Sup. Ct. R. 17. Under the facts of this case, if the Supreme Court grants certiorari and, in fact, reverses the Iowa Supreme Court's decision, basing its decision upon the alleged conflict between Iowa Code §628.4 (1987) and 11 U.S.C. §541, or upon the other issues raised by petitioner, the reversal would be largely without effect in this case. The petitioner received, in addition to the various automatic stays under the Bankruptcy Code, two additional stays of the Sheriff's Sale after the District Court's initial decision to grant a deed was rendered. Either of these two additional stays would be an independently sufficient ground upon which the petitioner would fail to obtain redemption rights. Neither would involve the consitutional problems alleged by this petition for certiorari, one of the stays having been

discretionarily granted by the Iowa Supreme Court, and the other a discretionary stay by the United States Bankruptcy Court for the Southern District of Iowa, pending appeal. Neither of these two stays would raise the Constitutional questions alleged by the petitioner, and Hawkeye Bank would still be entitled to receive a deed to the real estate rather than a certificate of sale.

The Supreme Court's decision to reverse in this case would not serve any beneficial purpose to the petitioner, and certiorari should therefore be denied.

III. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS THE IOWA SUPREME COURT GAVE FULL CONSIDERATION TO THE ISSUES AND DECIDED THEM CORRECTLY.

The real issue in this case involves the definition of "property". As this court has held, "Property interests are created and defined by state law. . . Uniform treatment of property interests by both state and

federal courts within a state serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving 'a windfall' merely by reason of the happenstance of bankruptcy," Butner v. United States, 440 U.S. 48, 55 (1979). As the multiplicity of bankruptcy filings by the petitioner clearly illustrate, the petitioner was and is attempting to do precisely that - obtain through bankruptcy "property rights" which by state law definition never existed.

The Iowa Code provides generally for redemption periods from zero to five years. Hawkeye Bank & Trust N.A. of Centerville-Seymour v. Milburn, _____ N.W.2d _____ (1989). The various redemption periods under Iowa law are all created by statute. However, as the Iowa Court found, there is a difference between the "equity of redemption" and statutory rights of redemption, Milburn, _____ N.W.2d at _____. In this

case, the petitioner's "equity of redemption" became property of the bankruptcy estate upon his filing of the bankruptcy petition. A statutory right of redemption, in contrast, would have arisen, if at all, only after the Sheriff Sale, Lincoln Joint Stock Land Bank v. Mutual, 239 Ia. 995, 1006, 33 N.W.2d 388, 394 (1948), and was therefore not property of the estate at the time of filing.

The Iowa Court addressed both the due process and equal protection issues, finding that §628.4 was justified to prevent the unfair- extension of the redemption period, and to make real estate more marketable ". . . §628.4 [is the] legislature's way of setting up a scheme which carefully balances the rights and obligations of all those involved when a real estate mortgage is foreclosed". Milburn, _____ N.W.2d at _____, citing Farmers Trust & Savings Bank v. Manning, 359 N.W.2d 461 (Iowa 1984). This

case exemplifies the very real concern with which the legislature was dealing. The petitioner defaulted on the mortgage in 1982. Because of the numerous stays invoked by the petitioner, the real estate was not sold until 1988. The petitioner in this case clearly received a period of time greatly in excess of the one year "redemption" time contemplated by the legislature.

In discussing the Supremacy issue, the court recognized that where Congress has chosen to exercise its authority, contrary provisions of state law must give way. Milburn, _____ N.W.2d at _____. However, the Bankruptcy Code generally fails to define "property", leaving that determination to the individual states. Butner, supra, 440 U.S. at 55. Therefore, the provision in 11 U.S.C. §541 which provides that property of an individual becomes property of the estate upon the filing of a

petition in bankruptcy, only applies to "property" which exists under state law.

In reaching its decision that there was no conflict, the Iowa Court followed the two-prong test prescribed by this Court in Perez v. Campbell, 402 U.S. 637, 644 (1971).

First, the court construed the two statutes allegedly in conflict, finding that §541 of the Bankruptcy Act was to preserve the assets of the debtor for distribution to creditors, and that §628.4 of the Iowa Code was designed to prohibit a debtor from receiving both a delay of Sheriff's Sale and statutory redemption. The court then found that the two statutes did not conflict, as property which existed at the time of filing (ie. the petitioner's equity of redemption) became property of the bankruptcy estate. Due to the fact that no foreclosure sale had yet been held, there was no statutory right of redemption existing at that time.

Hawkeye Bank and Trust N.A. v. Milburn, _____ N.W.2d _____ at _____ (1989).

The Iowa Supreme Court's decision fully and fairly considered the issues using the tests prescribed by this court, and the Petitioner's Petition for Writ of Certiorari should therefore be denied.

CONCLUSION

Due to the petitioner's lack of standing and to the fact that reversal would not ultimately benefit the petitioner, and due to the Iowa Supreme Court's full and fair consideration of these issues, the Petition for Writ of Certiorari should be denied.

Respectfully submitted this _____ day of July, 1989.

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CERTIFICATE OF SERVICE

I, John H. Neiman, counsel of record for the Respondent, Hawkeye Bank and Trust N.A. of Centerville-Seymour, hereby certify that on the _____ day of July, 1989, the foregoing Brief in Opposition to Petition for Writ of Certiorari was served on Marlyn S. Jensen, Route 2, Osceola, Iowa 50213, by depositing a copy of the same in the U.S. Mail, with First Class postage prepaid, in accordance with Rules 28.3 and 28.5 of the Rules of the Supreme Court of the United States.

John H. Neiman